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Sixth Judicial District
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**MONTANA SIXTH JUDICIAL DISTRICT COURT
PARK AND SWEET GRASS COUNTIES**

IN THE MATTER OF)
)
THE ADOPTION OF)
)
RULES OF COURT.)
)
_____)

ORDER

Pursuant to Rule 83 of the Montana Rules of Civil Procedure, and Sections
3-1-112, and 3-2-704, M.C.A.,

IT IS HEREBY ORDERED that the following rules of practice are hereby adopted as the
interim rules of practice in the District Court of the Sixth Judicial District of the State of Montana
in and for the Counties of Park and Sweet Grass and that they are hereby published as such; and that
they shall be distributed to the members of the bar.

IT IS FURTHER ORDERED that said rules shall take permanent force and effect thirty (30) days after the date hereof, and that all prior rules of the Sixth Judicial District are hereby annulled.

Done and dated this _____ day of _____, 2005.

WM. NELS SWANDAL
District Judge

RULES OF PRACTICE

of the

SIXTH JUDICIAL DISTRICT

of the

STATE OF MONTANA

in and for the Counties of Park and Sweet Grass

2005

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These rules supplement the Montana Rules of Civil Procedure ("MRCP"), the Uniform District Court Rules ("UDCR"), and applicable statutory and case law.

Rule 1. ASSIGNMENT OF CASES

The District Court of the Sixth Judicial District has assumed full jurisdiction of all cases on file with the Sixth Judicial District in Park and Sweet Grass Counties as of January 3, 1995, except for those cases which the Court elects to transfer to outside Courts where grounds for judicial disqualification exist or those in which the presiding Court is disqualified by one of the parties thereto within the time allowed by law. In addition, the Court may assign existing cases to outside Courts in those cases where such assignment is required in the interest of judicial economy.

Rule 2. LAW AND MOTION

A. **Monday/Tuesday.** Mondays are law and motion day in Park County, and the second and fourth Tuesdays of each month are law and motion days in Sweet Grass County. Court shall convene on law and motion day at 9:00 a.m. in Livingston and 9:30 a.m. in Big Timber. When law and motion days fall on an official holiday, the law and motion calendar shall be continued to the next scheduled law and motion day.

B. **Uncontested Matters.** All uncontested matters, judgments by default, probate proceedings, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion days. Contested matters involving questions of fact will not be heard on law and motion day without written approval of the Court but will be set as to day and time by order of Court as provided in Rule 3.

C. **Open Court.** All matters presented to the Court shall be heard in open court, except for adoption hearings (Section 40-8-126, MCA), hearings and trials under the Uniform Parentage Act (Sections 40-6-111 and 40-6-120 MCA), and those other matters required to be closed by law or allowed to be closed in the interests of justice.

D. **Calendar Preparation.** Counsel must notify the Park County Clerk of Court, the Court Administrator and opposing counsel by 10:00 a.m. each Thursday of matters to be placed on the law and motion calendar or set for hearing the following week. The matters filed shall be listed by the Clerk on a weekly law and motion calendar in the following order: 9:00 a.m.-- criminal matters; 10:00 a.m.-- adoption, probate and miscellaneous civil matters; and 10:30 a.m.-- youth court matters. Counsel must notify the Sweet Grass Clerk of Court by noon by Friday of matters to be placed on the law and motion calendar of the following Tuesday on which the Court will be in session. Matters to be heard in Sweet Grass County shall be set by the Clerk of Court.

E. **Contested Matters.** Any matter set for the law and motion calendar which proves to be contested is subject to postponement and shall be set on the contested calendar.

F. **Document Presentation.** No matter may be placed on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with

the Clerk.

G. **Ex Parte Matters.** Ex parte motions are not favored. Emergency matters requiring the Court's attention may be mailed or delivered to the court with a request for the Court's immediate attention. No ex parte matter will be considered if the opposing party is represented by counsel or if the opposing party's location is known but that party has not been served. No ex parte family law matters will be considered without demonstrating clear and convincing evidence of imminent physical or mental harm. Any ex parte motion must be accompanied by a proposed order setting a time and date for further hearing.

Rule 3. MOTIONS, BRIEFS, AND HEARINGS

A. **Motion Procedure.** All motions filed shall be ruled on pursuant to Rule 2, UDCR. All procedural motions shall be accompanied by a proposed Order.

B. **Oral Arguments.** Oral Arguments on motions under Rules 52, 56, 59, and 60, MRCP shall be deemed mandatory unless waived by all parties. Oral argument will be set only by Court order and at the Court's discretion. Oral arguments on all other motions must be requested by a party, or the court shall rule on written documents alone.

i) If a motion is not ruled upon within thirty (30) days of the date the motion and all supporting and opposing briefs are fully submitted for ruling, counsel may request that the Court review the motion.

ii) Counsel shall include with their motion a proposed Order granting oral argument if such is desired. In the event the Court determines that oral argument would be beneficial to ruling on a motion and orders oral argument, the moving party has the duty to obtain a hearing date and schedule such argument with the Court Administrator. The proposed Order granting oral argument shall include the date and time of argument or blanks for the Court to fill in the date and time.

iii) Counsel shall include with all motions a proposed Order for the Court's signature as stated in Rule 3A.

C. **Continuances.** Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with prior notice to all parties. All motions must be accompanied by an appropriate order for the Court's approval.

Rule 4. ORDERS, JUDGMENTS, OR DECREES

A. The party obtaining any Civil order, judgment, or decree must present the same in written form for the signature of the Court at the time of applying for the Order, Judgment, or Decree. When directed by the Court to prepare an order after hearing, the moving party shall prepare the order, unless another party is designated by the Court. Interlocutory orders must be

circulated to all counsel, (or unrepresented parties), prior to presentation to the Court. Final orders must be circulated to all counsel, (or unrepresented parties), at least five (5) working days prior to presentation to the Court to allow for comment or objection. A notice of entry of judgment must be sent to the last known address of the parties in all cases, including joint dissolution proceedings and default judgments.

B. Two (2) copies of any order to show cause, temporary restraining order, or like order shall be presented to the Court for signature. One shall be signed by the Court as an original order. One shall be conformed as part of the court files, and the other used for the purpose of making service.

C. Default Judgments. Plaintiff shall promptly mail or deliver endorsed copies of default judgments to defaulting parties at their last known address. Where default judgment entitles a party to unliquidated damages, that party may establish the amount of damages by affidavit unless the Court schedules a hearing.

Rule 5. SERVICE OF PROCESS AND PAPERS

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in the MRCP or other applicable statute, shall be filed with the Clerk of Court promptly and, in any event, before any action is to be taken thereon by the Court or the parties. Proper service does not include placing copies in counsel's "box" in the Clerk of Court's office unless prior permission is obtained from counsel.

Rule 6. SCHEDULING CONFERENCES, ORDERS AND DISCOVERY RULES

A. When a case is at issue and all parties have been served and have answered, the Court Administrator will issue a scheduling order or shall schedule and conduct a Case Scheduling Conference. After such conference the Court will issue a Case Scheduling Order. If a Case Scheduling Conference is not scheduled within thirty (30) days after answers to the complaint are filed, either party may request that the Court Administrator schedule the conference. The parties may stipulate to a waiver of discovery and request an immediate preliminary pre-trial conference.

B. Pursuant to Rule 16(b), MRCP, the following matters are exempt from the scheduling procedure required by this Rule:

- (1) Youth Court cases
- (2) URESA actions
- (3) Abstracts of Judgment and Transcripts of Judgment
- (4) Adoptions
- (5) Insanity hearings

- (6) Probate Cases
- (7) Small Claims appeals
- (8) Administrative appeals
- (9) Name Change Cases
- (10) Seizures and Forfeitures
- (11) Habeas Corpus and Post-conviction Relief
- (12) Criminal Cases (included to eliminate possibility of confusion)
- (13) Any other case for which good cause is shown and the Court so orders.

C. Pursuant to Rule 26, MRCP, the following discovery rules shall be followed in every cause not exempted above, except Domestic Relations Cases and those cases wherein good cause is shown by motion and affidavit:

1. Except with leave of Court, a party may not seek discovery from any source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written discovery requests upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve and file an appropriate disclosure not later than sixty (60) days after entry of the Case Scheduling Order. The disclosure shall contain the following information:

- (a) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;
- (b) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations or pertinent legal or case authorities;
- (c) the name, and if known, the address and telephone number of each individual known or believed to have discoverable information about the claims or defenses, and a summary of that information;
- (d) a copy of, or a description, including the location and custodian, of documents or data compilations, and tangible things and relevant documents reasonable likely to bear on the claims or defenses;
- (e) a computation of any damages claimed; and
- (f) the substance of any insurance agreement that may cover any resulting judgment.

(2) Supplementation of Disclosure. The disclosure obligation is reciprocal and continues throughout the case. A party who has made a pre-discovery disclosure is under a duty to supplement or correct the disclosure within a reasonable time if the party learns that the information disclosed

is not complete and correct or is no longer complete and correct.

(3) **Signing of Disclosure.** Every mandatory disclosure or supplement made by a party represented by counsel shall be signed by at least one attorney of record. A party who is not represented by counsel shall sign the disclosure. The signature of counsel or the party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

Rule 7. PRELIMINARY PRE-TRIAL CONFERENCES

Absent a motion and for good cause, this Court will not conduct preliminary pre-trial conferences until approximately one week prior to trial. Dates for addition of parties, identification of expert witnesses, motions, hearings and settlement conferences shall be set forth in the Case Scheduling Order issued by the Court after the Case Scheduling Conference.

At any time after the discovery period has run, according to the Case Scheduling Order, any party may move for, or request a trial date from the Court Administrator. The order setting trial shall include a preliminary pre-trial date, witness and exhibit list submission deadline, a jury instruction and objection to jury instruction deadline, a final pre-trial conference date, and a trial date.

Preliminary pre-trial conferences shall be conducted by the District Court Administrator.

Rule 8. COMMUNICATIONS WITH THE COURT

A. **Communications.** All communications with the Court shall go through the District Court Administrator or the Clerk of Court to ensure that no ex parte communications take place and to ensure judicial economy. The Court will not receive letters or other communication from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel.

B. **Ex Parte Communications.** There will be no ex parte discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in the imposition of sanctions against the offending attorney or party.

C. **Reminders to the Court.** In the event the Court has under advisement any matter (including but not limited to a motion or decision in a bench trial) for a period of more than thirty (30) days, each party affected thereby is encouraged to send to the Court a reminder letter particularly describing the matter under advisement and stating the date the matter was taken under advisement.

Rule 9. COURT RECORDS

A. **File Checkout Privilege.** The Clerk of Court shall not permit any files or documents to be removed from the Clerk of Court's office without prior order of the Court, except that civil files and probate files may be checked out for up to ten calendar days by attorneys or licensed title examiners residing in the county. The Clerk of Court must obtain a receipt from anyone checking out files or documents. All such files and documents shall be promptly returned upon request of the Court. The Court reserves the right to suspend checkout privileges for anyone abusing checkout privileges.

B. **Files Which May Not Be Checked Out.** The files in dependent/neglect cases and adoption actions shall not be withdrawn, examined, or inspected, except upon order of the Court and except for counsel in such cases, who may examine and inspect such files. The records of the Youth Court are governed by Section 41-5-601, et seq., MCA.

C. **Wills and Judgments.** No will admitted to probate, bond, or undertaking shall be checked out from the Clerk of Court's office, nor any judgment before it is filed by the Clerk of Court.

Rule 10. FILINGS

A. **Filing Fees.** All pleadings, motions, and briefs shall be filed with the Clerk of Court. The Clerk of Court shall not accept or file any document required to be accompanied by a filing fee, unless the fee is paid or the Court has approved a fee waiver in writing.

B. **Proposed Pleadings.** Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring leave of Court of Court to file, the movant shall file with the motion a copy of the proposed pleading or amendment and lodge the original with the Clerk of Court. If leave to file is granted, the Clerk of Court shall file the original forthwith.

C. **Discovery.** Pursuant to Rule 4, UDCR, no discovery documents shall be filed with the Clerk of Court without prior leave of the Court. Upon receipt of a deposition, the Clerk of Court shall mark it received and place it in the court file.

D. **Jury Demands.** When a demand for a jury trial is incorporated in a pleading, parties shall so indicate in the title as well as the body of the pleading.

E. **Striking Pleadings.** Any papers filed which do not conform to Rule 10 or 11, MRCP, may be stricken by the Court, on its own initiative and upon such terms as to the Court may appear just.

F. **Orders.** When any written order or judgment is made by the Court, it must immediately thereafter be presented to the Clerk for filing.

G. **Brief Deadlines.** All briefs required by rule, statute, or Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief and citing the delinquent party's attorney for contempt.

H. **Length of Briefs.** No brief shall exceed 20 pages in length, exclusive of indices and appendices, without prior leave of the Court.

I. **Citations in Briefs.** Briefs citing precedents not found in the Montana Reporter or the Pacific Reporter must be accompanied by complete photocopies of all cases referred to therein.

J. **Telefax Filings.** Counsel shall not submit documents to the Clerk of District Court by telefax absent actual emergency. Inability to submit a document by a previously Court-ordered deadline shall not be considered an emergency.

Rule 11. SETTLEMENT CONFERENCES OR MEDIATIONS

A. **Settlement Conference Required.** In each civil case subject to a Scheduling Order pursuant to Local Rule 6, a master-supervised Settlement Conference is required before a case may be tried, unless a stipulation executed by all counsel of record and any unrepresented party is filed with and approved by the Court waiving a Settlement Conference. The Settlement Conference shall be addressed in the Scheduling Order prepared and issued in accordance with Local Rule 6. The purposes of such conferences are to: (1) facilitate (but not coerce) settlement; (2) lessen congestion of the trial calendar; and (3) reduce the cost of litigation by providing a means to resolve contested cases prior to final trial preparation.

A mediation conducted by a trained mediator may be substituted for a Master-supervised Settlement Conference upon agreement of the parties, or by order of the Court. The Clerk of District Court shall maintain a list of Court-approved Settlement Masters and Mediators.

B. **Master-Supervised Settlement Conference.** The Master-supervised Settlement Conference may be held at any time upon stipulation of the parties or order of the Court. Unless otherwise agreed, the conference shall be held after the close of discovery and rulings on pretrial motions but prior to submission of the Pretrial Order. The Court shall issue a separate order confirming the appointment of a Settlement Master and providing for their compensation and the procedures to be followed at the Settlement Conference (Sample Exhibit "B"). Fees for indigent litigants may be waived when the Court has approved an Affidavit of Inability to Pay Filing Fees.

Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies will have a representative present via speaker phone, unless personal attendance is ordered by the Court upon a showing of good cause. All participants must have requisite settlement authority. The parties shall agree upon responsibility for the payment of the fees charged by the Settlement Master.

C. **Report of the Settlement Master.** Within five (5) days of the completion of the

Master-supervised Settlement Conference, the Settlement Master shall submit a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with copies to the Court, all counsel of record, and any parties not represented by counsel. In the event that the case is not fully settled, the form shall also state the following information obtained from counsel for the parties and any unrepresented party:

- (1) the length of time anticipated to be necessary for trial;
- (2) dates counsel or key witnesses are legitimately unavailable for trial;
- (3) any special requests or needs regarding trial scheduling; and
- (4) whether there is still a reasonable prospect for settlement.

Cases will be set for trial upon submission of the Settlement Master's report.

D. **Proceedings Confidential.** No person present at a Settlement Conference, including the Settlement Master, shall be subject to examination concerning statements made by any person at the Settlement Conference. The parties will not subpoena or otherwise require the Settlement Master to testify regarding the Settlement Conference or the Settlement Master's opinions regarding the case.

Rule 12. TRIALS

A. **Trial Settings.** Non-jury trials shall be scheduled by the Court throughout the year as time is available. Jury trials shall be held throughout the year, except during the last half of December.

B. **Criminal Trial Settings.** The first three weeks of March, June, September and December shall be set aside for criminal trials. The County attorney's office will provide the court with a list of all criminal matters ready for trial and trials shall be set for the next available criminal trial period. The County Attorney, Deputy County Attorney and all Defense Counsel shall meet on the second Monday of the following months at 1:30 p.m. with the Court Reporter and/or the Court Administrator for a pre-trial conference on all trials set for the next criminal trial period: 1) January for March settings; 2) April for June settings; 3) July for September settings; 4) October for December settings.

C. **Jury Instructions.** Proposed instructions to the jury in a civil action shall be presented to the Court and served upon each adverse party as stated in the jury trial preparation order. The original and one copy of each instruction proposed must be furnished to the Court. The Court's working copy of each instruction shall indicate the party on whose behalf it is requested, be numbered consecutively, and, on an **attached page**, contain reference to the source thereof, and a citation of authority, if any, supporting the statement of law therein. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as the jury instructions. The Court requests that, where possible, a 3 ½-inch computer disk in WordPerfect 8.0 or Word 2000 containing the proposed jury instructions accompany the instructions. The disk will not be returned after the trial.

Rule 13. POSTPONEMENT OF TRIALS

A. **Absence of Witness or Evidence.** Pursuant to Section 25-4-201, MCA, a motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing: (1) the nature and materiality of the expected testimony or evidence; (2) that diligent effort was timely made to secure the witness or the evidence; and (3) that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible upon the trial and the adverse party stipulates that it shall be considered as actually given on the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

B. **Late Continuances.** If any action set for a jury trial is continued within 96 hours of the trial date the Court may require the moving party to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court.

Rule 14. VOIR DIRE

A. **Length** The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of the Court.

B. **Questioning** Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

C. **Purpose** The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court in exercising its discretion may discourage counsel from:

- (1) Asking questions of an individual juror that are susceptible of being asked collectively;
- (2) Asking questions covered by and answered in the juror questionnaire, except to explore some answer in greater depth;
- (3) Repeating questions asked and answered;
- (4) Using voir dire for the purpose of attempting to instruct the jury on the law;
- (5) Using voir dire for the purpose of arguing the case; or
- (6) Asking a juror what his verdict might be under any hypothetical situation based upon expected evidence or otherwise.

Rule 15. ATTORNEYS

A. **Attorneys of Record.** Unless appearing specially on behalf of one of the attorneys of record, no attorney, unless the attorney's name appears on the pleadings in the case, may participate in any proceedings in the case until the attorney's name has been entered of record.

B. **Authority as Attorney.** In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceedings unless said attorney has an agreement in writing, signed by the client and filed in the record of the case, or unless the party has personally signed the pleadings by virtue of which the attorney appears therein.

C. **Withdrawal by Attorney.** Except as provided in Rule 15.F. herein, no attorney may withdraw from any case except by consent of the client or by leave of the Court after notice has been served on the parties and opposing counsel. This provision is subject to Sections 37-61-403 through 37-61-405, MCA, and Rule 10, UDCR.

D. **Addressing Witnesses and Attorneys.** Attorneys will not be permitted to address a witness on the stand in any manner except to propound a question to which an answer is desired. Attorneys will not be permitted to address each other during a trial or hearing except by permission of the Court.

E. **Attorney Fees.** In all civil cases in which attorney's fees are requested in the pleadings, the party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file a request for a hearing thereon. Failure to file such a request shall be deemed a waiver of the right to a hearing on fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until a final decision or order on the merits of the case has been issued by the Court.

F. **Release of Counsel of Record on Notice.** When a final disposition has been made of any case and the time for appeal has expired, all counsel of record shall be automatically relieved of their duties as counsel of record provided they first file a Notice of Termination with the Clerk of Court and serve the same on opposing counsel and their client. Thereafter, if any further proceedings are filed therein, notice must be served on the adverse party as provided in Rule 4(D), MRCP.

Rule 16. EXHIBITS

The Clerk is required to keep a list of all exhibits offered and the ruling of the Court thereon. No exhibit admitted into evidence shall be removed from the custody of the Clerk of Court without the Clerk's prior approval. Exhibits and any discovery documents filed with the Court shall be disposed of as provided in Rule 12 UDCR upon final disposition of each case. Counsel are encouraged to pre-label their proposed exhibits and, during a non-jury trial, will present the court with a notebook with all exhibits individually tabbed.

Rule 17. EVIDENCE OF CHARACTER

No more than three (3) witnesses will be permitted to testify as to the character of a person absent an order of the Court authorizing additional witnesses.

Rule 18. STIPULATIONS

No agreement or stipulation between the parties or their attorneys with respect to the proceedings in any cause will be considered for any purpose by the Court unless it is submitted in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. If parties wish to have a stipulation confirmed by the Court, then they must accompany the stipulation by a proposed Order.

Rule 19. OFFERS OF PROOF

Offers of proof may be in writing or may be entered in the Court Reporter's notes outside the presence and hearing of the jury, as may be decided by the Court.

Rule 20. TRIAL POSITION STATEMENT AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

At least 10 days prior to trial, in a civil case each party shall submit a Trial Position Statement which briefly outlines the issues to be addressed at trial, a list of witnesses and a one or two sentence description of the subject matter on which each witness will testify and a list of exhibits. In any other matter, counsel may submit a Trial Position Statement at least 10 days prior to hearing.

Proposed Findings of Fact and Conclusions of Law shall be submitted within 15 days after trial unless otherwise ordered by the Court in a format suitable for signature by the Court, together with a copy for the Court. The Court requests that the parties also submit their Proposed Findings on a 3 ½-inch computer disk or CD compatible with WordPerfect 8.0 or Word 2000.

Rule 21. SECURITY

A. No officers of the Court nor any member of the bar or his office associates or employees may act as a surety.

B. In lieu of surety in any case, there may be deposited with the Clerk of Court lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and if negotiable bonds or notes of the United States are deposited, shall also execute an agreement authorizing the Clerk to collect and sell the bonds or notes in the event of default. Such deposits shall be held by the Clerk of Court until released by order of the Court.

Rule 22. MARITAL DISSOLUTION OR PARENTING ACTIONS

A. **Parenting Classes.** All parents of minor children who file for dissolution or file a parenting action shall participate in a Court approved parenting class, either in person or through a home study course. Only upon filing a certificate of completion from such a course by each party will a final decree of dissolution or final parenting plan be granted. Parties may seek a waiver of this requirement from the Court, which the Court may grant for good cause shown.

B. **Temporary Child Support.** Whenever a marital dispute arises that results in a separation of parents, child support liability shall commence immediately. Counsel for the parties shall, within 30 days of Respondent's first appearance, submit verified financial affidavits to the Court and to opposing party. The parties shall confer within 30 days to set a temporary amount of child support. If the parties are unable to reach agreement, the Court shall then determine the proper amount of temporary child support based on the Montana Child Support Guidelines. The parties shall then have 15 days to object to such calculation. If no objection is filed, the amount of support calculated by the court shall be made an order by the court for temporary support. Failure to make child support payments may result in the imposition of sanctions. In the event of a dispute as to either the appropriate temporary custodial parent or the appropriate amount of payments, either party may file a motion with the Court requesting a hearing on the matters in dispute. The Court may award attorney's fees at its discretion in or after such hearing.

C. **Custody Evaluations.** Upon request of either party or sua sponte, the Court may order that the matter be referred to appropriate professional persons at the cost of one or both parties for investigation, report, and recommendation regarding custody and visitation rights of each child and parent. The report shall be returned to the Court, the parties, and their attorneys as soon as reasonably possible thereafter.

D. **Parenting Guidelines.** The Montana Sixth Judicial District Parenting Guidelines as revised in January, 1999 are attached to these Rules as Appendix A. These Guidelines are just that, Guidelines, are not mandatory and will not be applied arbitrarily to all cases; however, they offer a reasonable starting point for discussion among counsel and parties in the majority of cases.

E. **Notice to Child Support Enforcement.** The party commencing an action for dissolution of marriage, legal separation, child support, invalidation of marriage, or modification of child support, at the time the proceeding is begun, shall include in the petition a statement as to whether any of the children involved are at that time recipients of or applicants for public assistance. Upon filing of a complaint or petition which indicates the children involved are at that time recipients of or applicants for public assistance, the counsel for that party shall immediately notify the Child Support Enforcement Bureau in writing of the pending action and file proof of such notice with the Clerk of Court.

F. **Execution for Support Payments.** The Clerk of Court shall not issue any execution for support or alimony payments due under any decree of divorce without prior approval of the Court. Executions will not be issued unless supported by an affidavit affirmatively showing that

the parties have not entered into any arrangements not contemplated by the decree of divorce, that they are not living together, and that the payments are delinquent. Details of the delinquency must be specifically set forth.

Rule 23. CHILD SUPPORT GUIDELINES REQUIREMENTS

In any case in which the Court will be requested to enter an order setting or modifying child support, the parents' financial affidavits and uniform child support guideline worksheets or acceptable summaries thereof shall be submitted to and filed with the Court prior to entry of any child support order as required by Section 46.30.1515, A.R.M. Pursuant to said rule this requirement shall extend to default and stipulated cases as well as contested cases.

Rule 24. CERTIFICATION OF SELF-HELP TEMPORARY RESTRAINING ORDERS

A. When any action for declaration of invalidity of marriage, legal separation, dissolution of marriage, or child custody action is filed in the District Court between parties who are also parties to a self help temporary order of protection proceeding in a court of limited jurisdiction, counsel for the party who is the petitioner in the lower court proceeding shall promptly notify said lower court of the District Court action and move the lower court to suspend all further proceedings therein and certify the pleadings and any orders of that court to the Clerk of the District Court. Upon certification of such pleadings and any orders therein to the Clerk of District Court, the District Court shall assume exclusive jurisdiction thereof and any orders issued by the court of limited jurisdiction shall continue in full force and effect as the order of the District Court until dissolved or modified by the District Court.

B. Counsel shall notify the appropriate lower court and appropriate law enforcement agencies of any modification or dissolution of lower court orders certified to this Court and subsequently modified or dissolved by this Court.

Rule 25. CRIMINAL ACTIONS

A. **Arraignment.** An Acknowledgment of Rights form shall be presented to the Court at the time of arraignment by defense counsel.

A Plea of Guilty and Waiver of Rights form shall be presented to the Court at the time of a guilty plea by defense counsel.

These forms are available from the Clerk of Court.

B. **Omnibus Hearing.**

(1) When a plea of Not Guilty is entered, the Court shall direct that an omnibus hearing form be completed and filed. The purpose for this is to expedite procedures leading up to

the trial of the Defendant. The presence of the Defendant shall not be required. The prosecutor and defense counsel must be prepared at the hearing to address any pre-trial matter appropriate to the case, including but not limited to the matters set forth in Section 46-13-110(a) through (m), MCA. Once completed and signed by counsel, the Court will sign the form and it will be filed. Either the prosecutor or defense counsel may request that the form be completed in a hearing before the Court, if the parties are unable to stipulate to the provisions of the form.

C. **Trial Setting.** The Court will set trial as soon as it is possible to do so. The Order setting trial shall include deadlines for motions, jury instructions and pre-trial negotiations. Any motion not ruled on at least two weeks before trial should be brought to the Court's attention.

D. **Pre-Sentence Investigation.** All pre-sentence investigations shall be completed, and the reports based thereon delivered to the Court and to the parties, not later than one business day prior to sentencing.

E. **Bail.** Whenever cash bail is delivered to the Clerk of Court, the cash must, as soon as possible, be deposited in a trust account with the Park County Treasurer or Sweet Grass County Treasurer where checks, warrants, or drafts can be drawn on the account for the transfer of such funds.

No real estate bail filed pursuant to Section 46-9-403, MCA, shall be accepted by the Clerk of the District Court unless it is accompanied by the sworn schedule specified in that statute and a current title report by a land title insurance company and unless:

(1) It is accompanied by a fair market appraisal by a certified appraiser of the real estate certifying that the unencumbered equity not exempt owned by the accused or sureties is worth at least double the amount of the bail; or

(2) It has been approved by the County Attorney.

Proof of the recordation of a certified copy of the sworn schedule shall be filed with the Clerk of Court forthwith.

Whenever bail has been set by and furnished to a Justice of the Peace or City Judge and the cause in which the bail was furnished is transferred to the District Court, the following procedure must be followed:

At the time the papers transferring the case to the District Court are filed with the Clerk of the Court, the bail must also be delivered to the Clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the Justice or City Judge transfers the cause to the District Court.

(1) If the bail furnished was cash bail, the Justice or City Judge must deposit a proper check, warrant, or draft for the full amount of the bail with a notation of the party or person

who actually posted the cash bond. Upon receipt of the check, warrant, or draft, the Clerk of Court must issue a trust fund receipt and deliver it to the Justice of the Peace or City Judge.

(2) If the bail furnished was a bail bond or other bail as permitted by Section 46-9-401, MCA, the Justice or the City Judge must deliver the actual documents furnished as bail to the Clerk of the District Court.

(3) All bonds presented to the District Court for approval shall recite that they are payable to the District Court.

(4) Whenever bail has been set by and furnished to a Justice of the Peace in an action wherein the District Court has original trial jurisdiction and the County Attorney elects to proceed in District Court by filing a motion for leave to file an information direct, the following procedure must be complied with:

(a) The County Attorney must, contemporaneously with the filing of the motion in District Court, file a written request with the Justice of the Peace asking that the bail be transferred to the District Court.

(b) The County Attorney must deliver to the Justice of the Peace the original and a duplicate copy of such request.

(c) The Justice of the Peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the District Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the Clerk of the District Court, and the Justice of the Peace shall retain the original for her files.

F. **Bench Warrants.** In any criminal case where a defendant has appeared voluntarily or there is a stipulation with the County Attorney's office for a defendant to appear, and there is an outstanding bench warrant, defense counsel or the County Attorney's office shall notify the Court, in writing, to withdraw the warrant.

Rule 26: APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

A. The eligibility of every defendant to request Court-appointed counsel or the public defender must be determined in accordance with Section 46-8-111, MCA.

(1) When the Court finds that a defendant is unable to obtain legal representation, the Court will appoint counsel to represent the defendant in the following order of priority:

(a) When available, a public defender employed by or contracted for by Park or Sweet Grass Counties.

(b) A list of attorneys who have indicated a willingness to accept such

appointment.

(c) A list of members of the Bar in Park or Sweet Grass County.

(2) It will be the responsibility of the Clerk of District Court to notify Court-appointed counsel of their appointment.

(3) Attorneys, other than those employed or contracted as public defenders, appointed by the Court to represent indigent defendants or other persons unable to provide for their own counsel shall be compensated at a rate not to exceed Sixty Dollars (\$60.00) per hour for time expended in representing an indigent defendant accused of a felony, and Sixty Dollars (\$60.00) per hour for time expended in representing youths, in extraditions or in guardianships. Such attorney shall also be reimbursed for expenses reasonably incurred in such representation, but such expenses shall not include any general office overhead. Singular expenses in excess of Two Hundred Dollars (\$200.00) shall be incurred only after authorization of the Court.

B. In the event of a conviction of a Defendant represented by Court-appointed counsel or the public defender, the officer who prepares the pre-sentence report shall include in his recommendation to the Court: (1) a statement concerning the present or future ability of the Defendant to pay costs of his or her defense counsel; (2) that this statement is based on the Defendant's financial resources and the nature of the burden that payment of costs will impose; (3) a statement of the opinion of defense counsel as to an estimate of the costs in the case; and (4) the amount and method of payment of the costs. In the event there is no pre-sentence report, the prosecutor shall present the above recommendation to the Court.

C. The sentencing Court will evaluate the ability of the Defendant to pay the costs of defense counsel in light of the above recommendation. If the Defendant is ordered to pay such costs, all payments shall be made to the Clerk of the District Court, who shall reimburse the payments as provided in Section 46-8-115, MCA.

D. In the event of non-payment of costs, the County Attorney shall move the Court to issue an order to show cause as provided in Section 46-8-115, MCA.

Rule 27. REMOVAL TO SMALL CLAIMS COURT

All actions for recovery of money or specific personal property where the amount in controversy is not in excess of Three Thousand Dollars (\$3,000.00) shall be subject to removal to small claims court in the discretion of the Court pursuant to Section 3-10-1004, MCA.

Rule 28. WEAPONS

Only on-duty law enforcement officers or court security personnel shall be entitled to bring or carry firearms, knives, or other weapons in Park or Sweet Grass County Court. Anyone wishing

to enter the courtroom may be required to submit to a search of his person or belongings by security personnel.

Rule 29. PROBATE FEES

Attorney fees in informal probate matters will not be fixed by the Court, unless there is a disagreement between the attorney and the personal representative. Should there be a disagreement, either party may present the matter to the Court after giving proper notice and a hearing shall be conducted thereon.

Rule 30. SUBSTITUTION OF JUDGE

All motions for the substitution of a Judge shall be accompanied by the required filing fee at the time of filing, otherwise the motion shall be stricken.

Rule 31. SIX-PERSON JURIES

Pursuant to Section 3-15-106, MCA, in all civil actions where the relief sought in the complaint is under the sum of Ten Thousand Dollars (\$10,000.00), the trial jury shall consist of six persons. The Court shall encourage the parties to stipulate to six-person juries in other civil cases where appropriate.

Rule 32. ESTATES TO BE CLOSED WITHIN TWO (2) YEARS, CLERK'S DUTIES

In estate matters the Clerk shall notify the attorney of record ninety (90) days before the expiration of the two (2) year period following the appointment of the personal representative that it shall be called to the attention of the Court so that the Court may order the personal representative and his attorney to appear and show cause why the estate has not been closed, Section 72-3-1015, MCA. The Clerk of the District Court shall mail to the attorney of record the following notice:

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK/SWEET GRASS COUNTY

| | | |
|------------------|---|-------------------|
| IN THE MATTER OF |) | |
| THE ESTATE OF |) | Probate No. _____ |
| _____, |) | |
| Deceased. |) | NOTICE |
| _____ |) | |

Pursuant to Rule 32 of the Rules of Court for the Sixth Judicial District, notice is hereby given that in the absence of good cause shown to the Court, the above entitled matter will be called to the attention of the Court and the estate representative and heirs on the _____ day of _____,

19____, as to why the estate has not been completed.

DATED this _____ day of _____, 19____.

Clerk of Court

By _____
Deputy Clerk

Rule 33. WITNESSES

A. **Subpoena Duces Tecum.** A subpoena duces tecum may be issued for only such material as is relevant and material. All subpoenas shall be issued in accordance with Rule 45, M.R.Civ.P.

B. **Examination Limited.** On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross-examine the same witness, except by permission of the Court first asked and obtained.

C. **Discharge of a Witness.** A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for the fees.

Rule 34. JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the Clerk at the time judgment is granted by the Court, and the Clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The Clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by order of the Court in writing setting forth the facts of such removal.

Rule 35. PRIORITY RANKING OF PAYMENT OF FINES AND FEES

Unless otherwise specifically order by the Court in a judgment regarding punishments imposed on a convicted criminal defendant, the Clerk of Court shall establish separate accounts for all categories of payment ordered by the Court and distribute payments received from the defendant

to these accounts in the following priority order:

- A. County Attorney Longevity Pay Surcharge
- B. Recoupment - including:
 - (1) Repayment of Cost of Prosecution
 - (2) Repayment of Cost of Public Defense Attorney
 - (3) Repayment of Cost of Calling a Jury
 - (4) Repayment of Extradition Charges
- C. Drug Fund
- D. Fine
- E. Other fees and charges

Where ordered by the Court, restitution to the victim should be paid separately from the above listed fees and fines in the highest priority category.

Rule 36. DISMISSAL OF ACTION FOR LACHES

The Clerk of Court will bring to the attention of the Court on a quarterly basis those actions which the pleadings show to have been at issue for more than three (3) years. Periodically, the Court will review the status of civil cases and request status reports. Parties are to comply with such request within 20 days in writing. In the event parties do not comply, the Court may dismiss the matter or issue further appropriate orders.